

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY,
JANUARY 11, 2010

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Office of Zoning Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
KONRAD SCHLATER	Commissioner
PETER MAY	Commissioner (NPS)
MICHAEL TURNBULL	Commissioner
	FAIA, (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

This transcript constitutes the
minutes from the Regular Meeting held on
January 11, 2010.

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1 P-R-O-C-E-E-D-I-N-G-S

2 6:32 p.m.

3 CHAIRMAN HOOD: Okay. We're going
4 to go ahead and get started. This meeting
5 will, please, come to order.

6 Good evening, ladies and
7 gentlemen. This is January 11, 2010. My name
8 is Anthony Hood. Joining me are Commissioners
9 Schlater, May and Turnbull. We are also
10 joined by the Office of Zoning staff and the
11 Office of Planning staff and Office of the
12 Attorney General staff.

13 Copies of today's meeting agenda
14 are available to you and are located in the
15 bin near the door.

16 Please, be advised that this
17 proceeding is being recorded by the Court
18 Reporter and is also webcast live.
19 Accordingly, we must ask you to refrain from
20 any disruptive noises or actions in the
21 hearing room.

22 Please, turn off all beepers and

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1 cell phones.

2 Does the staff have any
3 preliminary matters?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: If not, let us
6 proceed with the agenda. The first hearing
7 action, Zoning Commission Case No. 10-01,
8 Office of Planning Text Amendment to amend the
9 C-3-C Zone District. Ms. Steingasser?

10 MS. STEINGASSER: Commissioner
11 Hood, the Office of Planning is recommending a
12 set down of a text amendment to allow, as a
13 matter-of-right now, development for projects
14 related to approve new community plans and for
15 affordable housing projects funded by the city
16 to achieve equivalent density and height in
17 the TDR Zones as if they were to have
18 purchased TDRs without such purchase.

19 In our original report, we
20 recommended a special exception review be
21 provided to these projects in lieu of the PUD,
22 which is the other option for this zone.

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1 After discussions with the Office
2 of Attorney General, they had some legal
3 issues. The solution soon became more complex
4 than the problem and so we are now
5 recommending a straightforward matter-of-
6 right. We think we will achieve all the
7 goals.

8 We think it's in the public
9 interest to allow affordable housing projects,
10 new communities or small area planned
11 equivalence approved by Council with a very
12 strong public purpose. I have attached some
13 excerpts from that in our staff report.

14 And we are recommending now
15 revised language, I believe was provided to
16 you this evening by OAG.

17 CHAIRMAN HOOD: Okay.
18 Commissioners, this is revised language.
19 Thank you, Ms. Steingasser. That was
20 presented to us this evening. Unless someone
21 has any comments or questions for Ms.
22 Steingasser? Commissioner May?

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1 COMMISSIONER MAY: I remember
2 there being significant discussion in some of
3 the Zoning Regulation rewrite about TDRs. And
4 I'm wondering how is this going to mesh with
5 the future Zoning Regulations?

6 MS. STEINGASSER: This would not
7 conflict with the future Zoning Regulations.
8 What we found in our preliminary study of TDRs
9 was that there is a far greater capacity to
10 receive TDRs than there is a capacity at this
11 point to generate. So this would not conflict
12 with the market of TDRs.

13 COMMISSIONER MAY: Okay. And then
14 the second thing is one of the statements in
15 the report is that this is not -- this is an
16 alternative, in essence, to a PUD. And I'm
17 wondering for projects that are as big as we
18 anticipate this to be, I guess, or at least
19 I'm anticipating this to be, I mean, a PUD
20 doesn't seem overly burdensome and actually is
21 an appropriate method for allowing this kind
22 of, I guess, zoning for this sort of

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1 development.

2 MS. STEINGASSER: Well, the reason
3 we felt the PUD was actually an excessive
4 burden on the new communities and the
5 affordable housing project was both the time
6 involved and the participation necessary when
7 the project itself is its own amenity.

8 You know, the benefit is that it
9 is affordable housing. The city is already
10 invested in the project, either through
11 funding of the new communities projects or
12 through funding of an individual affordable
13 housing project.

14 So the benefits and the amenities
15 were already pre-established. So it just
16 became a question of why go through the full
17 set down, the public hearing, the public
18 coordination when the other issues of a PUD
19 would be adverse impact and public capacity,
20 which we thought could be addressed through
21 the special exception standards.

22 COMMISSIONER MAY: But we are not

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1 going to have those now.

2 MS. STEINGASSER: But now we are
3 no longer recommending that.

4 COMMISSIONER MAY: And so how do
5 we address those issues?

6 MS. STEINGASSER: We don't. It
7 was discussed with the Office of Attorney
8 General that these areas are all identified.
9 They are transfer-of-development-rights
10 receiving zones. They are identified in the
11 Comprehensive Plan as areas that are already
12 appropriate for the highest possible density
13 within the city.

14 All projects that are currently
15 capable of affording and purchasing the
16 transfer-of-development-rights can go upwards
17 to the 10 FAR and 130 feet with absolutely no
18 design review. So it was felt that to assign
19 a review to only affordable housing projects
20 was actually antithetical to what we were
21 proposing, which was that it created an
22 arbitrary burden on an affordable housing

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1 project that was not applicable to other
2 projects in the same geographic boundary.

3 COMMISSIONER MAY: This is going
4 to be an interesting hearing. I just have
5 this feeling that we are opening the door to
6 potentially undesirable consequences as a
7 result of this as a matter-of-right and not
8 subjecting something this large to a PUD.

9 I mean, I would think that
10 anything this large would likely come before
11 us as a PUD in the first place. So it's --

12 MS. STEINGASSER: Well, that's
13 why --

14 COMMISSIONER MAY: I just have --
15 we don't have a lot to react to yet.

16 MS. STEINGASSER: Yes.

17 COMMISSIONER MAY: We certainly
18 haven't had any public input on it, so I just
19 had that sense.

20 MS. STEINGASSER: Well, it's
21 narrowly defined so that it has to be an
22 affordable housing project. It has to --

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1 which is basically a project that is already
2 coming equipped with its benefits and
3 amenities and recognized public interest.

4 It has to also be funded by the
5 District Government. So what we are doing is
6 we are leaving the burden of additional public
7 burdens of funding an already publicly funded
8 project. And it is constrained only to the
9 receiving zones where there is already that
10 equivalent height and density that has no
11 design review.

12 COMMISSIONER MAY: I'm just
13 curious. The particular development that you
14 are suggesting that this hearing be
15 consolidated with at 2 M Street, N.E., I mean,
16 that Northwest One New Community has been in
17 the works for three years, something like
18 that.

19 MS. STEINGASSER: Closer to five.
20 Between the planning process, working with
21 the community.

22 COMMISSIONER MAY: So five years.

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1 And now we have this need for this urgent
2 zoning.

3 MS. STEINGASSER: That's correct.

4 COMMISSIONER MAY: And what has
5 happened all the years leading up to this?
6 Was there some other thought about how this
7 was going to be accomplished?

8 MS. STEINGASSER: Well --

9 COMMISSIONER MAY: I mean, why is
10 it all of a sudden now very important?

11 MS. STEINGASSER: Well, it has
12 always been very important. New communities--

13 COMMISSIONER MAY: Why is this
14 solution now very important?

15 MS. STEINGASSER: Because part of
16 the new community plan requires the
17 development of parcels that are within the TDR
18 Receiving Zones. They are to create a mixed
19 income buildings. The market share of which
20 will help fund and underwrite the
21 affordability on the western side of North
22 Capitol Street.

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1 So it's that relationship of
2 having market rate funds to help support the
3 affordability requirements of that. The
4 project has been moving forward. You know,
5 it's the same story that the private
6 development communities are telling about the
7 ability to get financing, the ability to
8 either work through bonds or financing and it
9 just hasn't materialized.

10 The project is close to being
11 ready to go. We felt this was the most
12 expeditious way to move that project along.

13 I want to be clear that if we set
14 down the alternative language, the project in
15 question would not be before the Commission.

16 COMMISSIONER MAY: Right.

17 MS. STEINGASSER: So we would not
18 need to waive any set downs.

19 COMMISSIONER MAY: Will the
20 hearing still need to be expedited?

21 MS. STEINGASSER: I believe so,
22 yes, to get this effective so that the

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1 applicant can go to building permit.

2 COMMISSIONER MAY: All right.
3 Okay. And since all we're doing at this
4 moment is deciding whether or not to have a
5 hearing, I mean, I don't feel totally
6 comfortable with the amount of information we
7 have. It seems like it's all coming very
8 quickly without a lot of background. And the
9 fact that we're getting revised language, you
10 know, today, doesn't make me feel much better.

11 I'm not saying it's enough to make
12 me not want to set it down, but I'm just
13 anxious about it. That's it for me for my
14 questions.

15 CHAIRMAN HOOD: Thank you,
16 Commissioner May. Commissioner Turnbull?

17 COMMISSIONER TURNBULL: Thank you,
18 Mr. Chair. I just have one. I can't recall
19 the street sizes around all the receiving
20 zones. I'm assuming that the 130 feet, the
21 Height Act, this all falls under the Height
22 Act?

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1 MS. STEINGASSER: Absolutely.
2 North Capitol and 1st Street both are capable
3 of generating 130 foot buildings.

4 COMMISSIONER TURNBULL: Okay.

5 CHAIRMAN HOOD: Commissioner
6 Schlater?

7 COMMISSIONER SCHLATER: Mr.
8 Chairman, I just want to say for the record
9 that I have to recuse myself on this case,
10 because my employer, William C. Smith &
11 Company is the developer at the Northwest One
12 New Community and so I won't be able to sit on
13 this case. Thanks.

14 CHAIRMAN HOOD: Thank you very
15 much, Commissioner Schlater.

16 Well, I'm not sure where my
17 colleagues are. I think, you know, I have
18 seen a lot of things change and a lot of
19 things happen. And as Commissioner May has
20 already mentioned, this will make a very
21 interesting hearing.

22 I think we need to go forward and

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1 see how interesting it is going to be. And
2 also, I am in tune to looking at the
3 alternative language, which would take out, I
4 believe, 2nd and M Street, unless someone
5 feels otherwise.

6 And I think that's what we're
7 being asked to look at the language, in which
8 I think all the parties, at this point, OP and
9 OAG, have agreed that it's legally sufficient
10 for us to move forward.

11 I would be in support. And
12 because there is three of us, I want to see if
13 all of us are in support of moving forward
14 with this.

15 So I would move approval of the
16 revised language of 771.4 that was submitted
17 to us tonight and also expediting. I don't
18 know what that means. Do we cut the 45 days
19 or what are we talking about?

20 MS. STEINGASSER: It cuts about 10
21 days off.

22 CHAIRMAN HOOD: Oh, 10 days off,

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1 okay. And expedited request that we and staff
2 work and try to expedite this hearing as soon
3 as possible.

4 We can't do it next week, can we?
5 Oh, and also waive the rules for the late
6 report. This looks like things are still
7 running, so we will forgive and waive the
8 rules for the late report.

9 Okay. So is that all we need to
10 do?

11 MS. SCHELLIN: Yes, sir.

12 CHAIRMAN HOOD: Okay.

13 COMMISSIONER MAY: I was wondering
14 if I could ask a question of OAG?

15 CHAIRMAN HOOD: Could I do this?
16 Could we accept the motion or is this
17 something that is going to be added to the
18 motion, because that way it won't be repeated?

19 COMMISSIONER MAY: It might. It
20 might.

21 CHAIRMAN HOOD: Okay. Well, hold
22 that caveat and Commissioner May, let's ask

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1 the question.

2 COMMISSIONER MAY: Well, I mean,
3 if you made a motion and we get a second and
4 then discuss it.

5 CHAIRMAN HOOD: Your's may need to
6 be added, so --

7 COMMISSIONER MAY: Right, right.

8 CHAIRMAN HOOD: Okay.

9 COMMISSIONER MAY: The question I
10 had was I understand why special exception
11 review wouldn't necessarily make sense, but
12 I'm wondering whether the sort of one-time
13 design review that we do at Capitol Gateway in
14 that overlay, not Capitol Gateway, Capitol --
15 what's the -- Capitol South area, what is
16 that?

17 MS. STEINGASSER: Capitol Gateway.

18 COMMISSIONER MAY: That's Capitol
19 Gateway.

20 CHAIRMAN HOOD: Overlay.

21 COMMISSIONER MAY: Capitol Gateway
22 Overlay, that sort of one-step design review,

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1 whether we could institute something like that
2 in cases where this is going to be executed
3 simply because there is that extra density?

4 I know that we did that extra
5 density case --

6 MR. RITTING: Yes, the concern is
7 the same with -- I apologize if that sounds a
8 little too loud. I'm not quite sure what is
9 going on with the volume. But the legal
10 concern is the same whether it is a one-step
11 design review or a special exception type
12 review.

13 (Audio system failure for approx 5
14 seconds.)

15 MR. RITTING: So creating some
16 other form of review doesn't solve that
17 problem.

18 COMMISSIONER MAY: Yes. Okay. So
19 I guess it doesn't change the motion. But
20 that is something that I would like to talk
21 about a little more. Thanks.

22 CHAIRMAN HOOD: Okay. Thank you

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1 very much. Can I get a second?

2 COMMISSIONER TURNBULL: Second.

3 CHAIRMAN HOOD: Moved and properly
4 seconded. Any further discussion?

5 All those in favor?

6 ALL: Aye.

7 CHAIRMAN HOOD: We did include in
8 that motion waive the report? Yes. Any
9 opposition? Not hearing none, Ms. Schellin,
10 would you, please, record the vote?

11 MS. SCHELLIN: Yes. Staff records
12 the vote 3-0-2 to set down Zoning Commission
13 Case No. 10-01 and to approve the expedited
14 hearing and to waive the rules for receiving
15 the late submittal of OP's report.
16 Commissioner Hood moving, Commissioner
17 Turnbull seconding, Commissioner May
18 approving, Commissioner Keating not present,
19 not voting, Commissioner Schlater not voting
20 having recused himself.

21 CHAIRMAN HOOD: Okay. Let's move
22 to final action. Also, let me acknowledge we

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1 have Mr. Jennings from DDOT. He was trying to
2 hide down there. We want to make sure -- and
3 forgive me for not acknowledging you earlier.

4 We always like it when we see DDOT.

5 Say it in the mike, so we can get
6 that on record.

7 MR. JENNINGS: It's a pleasure to
8 be here.

9 CHAIRMAN HOOD: It's a pleasure to
10 be here?

11 MR. JENNINGS: I always enjoy
12 being here. Thank you. Thank you very much,
13 Jeff Jennings for the record.

14 CHAIRMAN HOOD: All right. Thank
15 you, Mr. Jennings.

16 MR. JENNINGS: Thanks.

17 CHAIRMAN HOOD: Okay. Let's go to
18 final action. Zoning Commission Case -- you
19 know what, I need to switch these after
20 looking at it, Commissioners. Let's take B
21 first and A second.

22 Let's do Zoning Commission Case

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1 No. 06-01A, Steuart-H Street, LLC, two-year
2 time extension at Square 776. Ms. Schellin?

3 MS. SCHELLIN: This was a request
4 that was filed, I believe, back in the summer
5 and the Commission had it on its agenda back
6 in September. And at that time, the
7 Commission decided to defer action until it
8 had the hearing on the PUD Modification Case
9 06-01B.

10 So the two-year time extension is
11 before you. We did receive a letter from the
12 applicant saying that they were withdrawing
13 their request. However, I believe OAG has
14 indicated they believe that this request is
15 still valid.

16 CHAIRMAN HOOD: And I would agree,
17 because I think without the extension, you
18 don't have a modification. I would agree I
19 believe that is what OAG has advised us. And,
20 Mr. Ritting, if you want to add to that?

21 MR. RITTING: To just expand on
22 that slightly, the applicant's theory is that

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1 the time extension is not required because
2 they filed a modification request. I disagree
3 with that, because I believe that they are
4 required under the Zoning Regulations to
5 justify their time extension request under
6 Regulation No. 204.810.

7 They did submit in the companion
8 case for the time extension a justification
9 for that, so I believe that it is certainly
10 warranted that you would take action on that
11 tonight.

12 However, I believe their
13 withdrawal was based on a false assumption.

14 CHAIRMAN HOOD: Okay. I would
15 agree. I mean, but very creative, but I would
16 agree with what Mr. Ritting said. Any of my
17 colleagues want to comment on that?

18 Okay. What I would like to do is
19 move approval for the time extension, even
20 though -- and just accept the letter 06-01A,
21 Exhibit 5, so noted. But I would think that
22 as it has already been stated that we need to

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1 move on the time extension.

2 I think they have made their case,
3 especially with economic conditions in this
4 day and time, so I would move approval of
5 Zoning Commission Case No. 06-01, two-year PUD
6 time -- well, you know what, let me just say
7 it from now. A two-year time extension, two-
8 year PUD time extension at Square 776 and ask
9 for a second.

10 COMMISSIONER SCHLATER: Second.

11 CHAIRMAN HOOD: It is moved and
12 seconded. Any further discussion?

13 All those in favor?

14 ALL: Aye.

15 CHAIRMAN HOOD: Not hearing any
16 opposition of those present, Ms. Schellin,
17 would you record the vote?

18 MS. SCHELLIN: Yes, staff records
19 the vote 4-0-1 to approve final action in
20 Zoning Commission Case No. 06-01A,
21 Commissioner Hood moving, Commissioner
22 Schlater seconding, Commissioners May and

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1 Turnbull in support, Commissioner Keating not
2 present, not voting.

3 CHAIRMAN HOOD: Okay. Next we
4 have Zoning Commission Case No. 06-01B,
5 Steuart H-Street, LLC, PUD Modification at
6 Square 776. And this is the PUD modification.
7 Ms. Schellin?

8 MS. SCHELLIN: This is before you
9 for final action. I don't believe we got
10 anything additional before you, other than the
11 draft order.

12 CHAIRMAN HOOD: Did NCPC comment?
13 NCPC didn't comment on this? Anyway, I don't
14 see it. Okay.

15 COMMISSIONER MAY: Did they
16 comment on PUD Modifications?

17 CHAIRMAN HOOD: Do they? I don't
18 know. That's a good question. I read so
19 much, I don't remember.

20 COMMISSIONER MAY: For some
21 reason, I don't think so. I don't remember it
22 being on the NCPC agenda, but --

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1 CHAIRMAN HOOD: Okay. Well, I
2 don't see it. Maybe they don't. Okay.

3 COMMISSIONER MAY: I don't think
4 they do. I don't think they actually come.

5 CHAIRMAN HOOD: Okay. I think the
6 big issue was it was always one of those
7 questions that you just don't remember.

8 COMMISSIONER MAY: Yes.

9 CHAIRMAN HOOD: It's a sticking
10 question. Now, we've got to find the answer
11 to it, because I don't remember.

12 COMMISSIONER MAY: Maybe Ms.
13 Schellin knows.

14 CHAIRMAN HOOD: Ms. Schellin, does
15 NCPC comment on PUD modification?

16 MS. SCHELLIN: We send them
17 everything, but they are not required to, no.
18 But we do send them everything. We can have
19 Ms. Hanousek check the file to see if it came
20 in, if you would like?

21 CHAIRMAN HOOD: That's okay. If
22 we don't have it in front of us or can't find

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1 it, I just wanted to acknowledge.

2 MS. SCHELLIN: We did not have
3 anything as of today.

4 CHAIRMAN HOOD: Okay. Okay. So
5 again, I think the issue here, the plans are
6 changed and I think we saw that. I think we
7 fleshed this out during proposed and I don't
8 have anything to add. Let me open it up to my
9 colleagues. Okay.

10 Not seeing anything, I would move
11 that we approve this PUD Modification. But in
12 this motion, I would ask to work with OAG that
13 we can make them end together. I don't know
14 how that works, but, you know, like the time
15 extension for two-years from a certain date
16 and it's going to end at a certain time.

17 And I think we need to bring those
18 two together, so some parity there.

19 MR. RITTING: Yes, I can certainly
20 consolidate the two orders into one and
21 include the findings necessary to justify the
22 time extension and the order granting the PUD

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1 Modification.

2 You bring up a related issue which
3 is the timing of the extension, i.e., how long
4 does it last? I believe the applicant was
5 under the impression when they submitted their
6 letter requesting to withdraw the time
7 extension request, that by granting the PUD
8 Modification, you would make the order valid
9 for two years from the date the order is
10 issued.

11 That, in effect, would grant a
12 slightly longer time extension than was
13 originally applied for in their time extension
14 request, which expired in October. So suppose
15 we issue the order tomorrow, that would mean
16 it would be a time extension for two years and
17 three months.

18 If you believe that that's a
19 warranted amount of time and it certainly
20 would be for purposes of administrative
21 efficiency useful to have the PUD Modification
22 expire -- or rather the original expire at the

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1 same time as the modification.

2 In fact, it seems kind of silly to
3 have them expire at different times. I could
4 do that so that the term would be the same.

5 CHAIRMAN HOOD: Well, whatever it
6 is, that sounded good. So unless my
7 colleagues object, that you do just that
8 whatever it is. Commissioner May?

9 COMMISSIONER MAY: Yes. I just
10 wanted to comment. I assume that the
11 conditions of the revised order are going to
12 be essentially the same except for the changes
13 that we discussed in the hearing, right?

14 MR. RITTING: Well, that brings up
15 a point that I mentioned on the draft that I
16 sent you about the condition for the grocery
17 store.

18 COMMISSIONER MAY: Right.

19 MR. RITTING: I noticed in
20 reviewing the draft modification order that a
21 condition requiring the grocery store of a
22 certain size to be included in the project was

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1 absent from the draft modification order
2 submitted by the applicant.

3 I think it would be unusual for
4 you to withdraw a condition that you included
5 in the original PUD order through a
6 modification order, especially given that
7 there was no evidence in the record at the
8 modification hearing that they were seeking to
9 withdraw that condition.

10 COMMISSIONER MAY: I agree with
11 that. I mean, it wasn't explicitly requested.

12 There was no testimony or evidence at the
13 hearing about withdrawing it, so I would
14 assume it would still be a condition.

15 CHAIRMAN HOOD: I think we have a
16 general consensus up here to exactly that.
17 Are there any other discussion?

18 Oh, I need a second, okay.

19 COMMISSIONER MAY: Second.

20 CHAIRMAN HOOD: I had already
21 moved. Okay. Commissioner May seconding.
22 Any further discussion?

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1 All those in favor?

2 ALL: Aye.

3 CHAIRMAN HOOD: Ms. Schellin,
4 would you record the vote, not hearing any
5 folks against? Do we have a proxy?

6 MS. SCHELLIN: No.

7 CHAIRMAN HOOD: Okay.

8 MS. SCHELLIN: He didn't
9 participate.

10 CHAIRMAN HOOD: Okay.

11 MS. SCHELLIN: So staff records
12 the vote 4-0-1 to approve final action on
13 Zoning Commission Case No. 06-01B,
14 Commissioner Hood moving, Commissioner May
15 seconding, Commissioner Schlater and Turnbull
16 in support or in favor, Commissioner Keating
17 not voting, not present, having not
18 participated.

19 CHAIRMAN HOOD: Okay. Thank you,
20 Ms. Schellin.

21 Next, Zoning Commission Case No.
22 09-11. This is the Office of Planning Text

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1 Amendment re: retail and services used in SP
2 Zone Districts. Ms. Schellin?

3 MS. SCHELLIN: We did receive an
4 NCPC report at Exhibit 13 in this case.

5 CHAIRMAN HOOD: Okay. Thank you.
6 Any discussion on 09-11? Any discussion? I
7 will move that we approve 09-11 and also
8 acknowledge the NCPC report as no adverse
9 impacts and ask for a second.

10 COMMISSIONER SCHLATER: Second.

11 CHAIRMAN HOOD: Moved and properly
12 seconded. Further discussion?

13 All those in favor?

14 ALL: Aye.

15 CHAIRMAN HOOD: Not hearing any
16 opposition, Ms. Schellin, would you record the
17 vote?

18 MS. SCHELLIN: Yes, staff records
19 the vote 4-0-1 to approve final action in
20 Zoning Commission Case No. 09-11, Commissioner
21 Hood moving, Commissioner Schlater seconding,
22 Commissioners May and Turnbull in support,

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1 Commissioner Keating not present, not voting.

2 CHAIRMAN HOOD: Okay. Next,
3 Zoning Commission Case No. 09-17A, D.C. Public
4 Library - Text Amendment pertaining to all
5 public libraries. Ms. Schellin?

6 MS. SCHELLIN: This is before you
7 for final action. And I don't think we have
8 an NCPC report. We do not. So we have the
9 proposed rule making, a copy of that before
10 you and I would ask that the Commission
11 consider final action.

12 CHAIRMAN HOOD: Thank you, Ms.
13 Schellin. Any comments, Commissioners?

14 COMMISSIONER MAY: Are we sure
15 there is not something from NCPC? Because I'm
16 certain it was voted upon at NCPC.

17 MS. SCHELLIN: Ms. Hanousek will
18 go and check, but I have not seen anything. I
19 did not see anything come in today.

20 CHAIRMAN HOOD: You want to wait
21 before we do that to see?

22 COMMISSIONER MAY: I think we can

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1 continue the discussion, because there are a
2 couple of other items we need to discuss.

3 CHAIRMAN HOOD: Okay. Let's go
4 right ahead. Any discussion?

5 COMMISSIONER MAY: Well, there --

6 CHAIRMAN HOOD: Mr. May?

7 COMMISSIONER MAY: We have late
8 submissions to address?

9 MS. SCHELLIN: This is the rule
10 making case.

11 COMMISSIONER MAY: Oh, it's the
12 rule making, oh, got it, okay, sorry.

13 CHAIRMAN HOOD: Yes, I really
14 believe the next discussion, the next case,
15 we're going to have a little discussion.

16 COMMISSIONER MAY: Okay.

17 CHAIRMAN HOOD: And I'm glad Mr.
18 Jennings --

19 COMMISSIONER MAY: Sorry, I got
20 it --

21 CHAIRMAN HOOD: -- came down just
22 for that.

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1 COMMISSIONER MAY: -- mixed up.

2 CHAIRMAN HOOD: So yes, I was
3 trying to hurry and get to that. I know Mr.
4 Jennings is going to stay around for that last
5 one.

6 COMMISSIONER MAY: All right.

7 CHAIRMAN HOOD: Are we fine? Any
8 issues with this?

9 COMMISSIONER MAY: No issues.

10 CHAIRMAN HOOD: Okay. Well, I
11 would move approval of Zoning Commission 09-
12 17A and ask --

13 MR. COLLINS: Excuse me, Chairman
14 Hood, just to clarify, we do not have an NCPC
15 report.

16 CHAIRMAN HOOD: Okay. Thank you.

17 COMMISSIONER MAY: Sorry.

18 CHAIRMAN HOOD: Of 09-17A, D.C.
19 Public Libraries - Text Amendments, public
20 libraries, and ask for a second.

21 COMMISSIONER TURNBULL: Second.

22 CHAIRMAN HOOD: Moved and properly

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1 seconded. Any further discussion?

2 All those in favor?

3 ALL: Aye.

4 CHAIRMAN HOOD: Not hearing any
5 opposition, Ms. Schellin, would you record the
6 vote?

7 MS. SCHELLIN: Yes. Staff would
8 record the vote 5-0-0 to approve final action
9 in Zoning Commission Case No. 09-17A,
10 Commissioner Hood moving, Commissioner
11 Turnbull seconding, Commissioners May and
12 Schlater in support, Commissioner Keating in
13 support by absentee ballot.

14 CHAIRMAN HOOD: Okay. Next,
15 Zoning Commission Case No. 09-17, D.C. Public
16 Library - Map Amendment and Special Exception
17 at Part of Parcel 207/64. Ms. Schellin?

18 MS. SCHELLIN: Yes, sir. On this
19 one, we did have one item. Actually, I
20 believe there actually may be two items that
21 came in after the record closed. I believe
22 DDOT's report also came in after the record

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1 closed, Exhibit 39, and then Exhibit 40 was a
2 filing by the applicant. So if the Commission
3 so desires to open the record to accept those
4 filings?

5 CHAIRMAN HOOD: Okay. So we need
6 to open the record for 39 and 40. What about
7 36?

8 MS. SCHELLIN: It came in.

9 CHAIRMAN HOOD: It came in on
10 time?

11 MS. SCHELLIN: Right.

12 CHAIRMAN HOOD: The ANC? Great.
13 Okay. Commissioners, any problems with
14 opening the record for 39, Exhibit 39, DDOT's
15 report, and the applicant's response to DDOT's
16 report on 40? Any problems with letting those
17 in? Okay. All right. So ordered by
18 consensus both of those will be admitted.

19 We may take this one a little bit
20 out. We may have some questions for Mr.
21 Jennings.

22 Mr. Jennings, I'm going to start

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1 off and ask you if you would be so kind to
2 help me. Explain in your report that you
3 submitted, and I'm trying to find exactly the
4 particular language, "DDOT's six-year spending
5 plan is fully committed and leaves no
6 available budget room, at this time. There is
7 a need for additional safety along the portion
8 of Alabama Avenue."

9 You know, unfortunately, I mean,
10 not unfortunately, fortunately, and I'm glad
11 to have a job, but I work in the Federal
12 Government, so I'm not sure some times how
13 intergovernment works some times in the
14 District.

15 But it seems to me that DDOT is
16 the one who is responsible for any streets and
17 should be working along with DCPL to try to
18 accommodate some of those issues. And I'm not
19 sure. And you're saying that the money is all
20 -- or DDOT's budget has been spent, so I'm not
21 sure how do we achieve, how do we get to the
22 point of even looking at some of those issues

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1 that may have come up?

2 MR. JENNINGS: That's a very good
3 point. Once again, for the record, my name is
4 Jeff Jennings. I work for the District
5 Department of Transportation. The Six-Year
6 Spending Plan has been obligated. And with
7 respect to agencies that have projects that
8 they wish to see get done in a certain amount
9 of time, I'll give you a very good example.

10 We have recently had the folks who
11 are working on the Wilson Senior High School
12 in Upper Northwest approach DDOT and they have
13 actually taken into consideration a lot of
14 traffic calming construction around Wilson
15 High School, which they approached us with in
16 the last couple of months. And we like the
17 sound of it and they were fully aware that
18 this was going to be part of their own budget
19 in order to accomplish this.

20 They wanted DDOT construction
21 crews as well as DDOT planning and policy
22 staff to review everything they were doing in

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1 advance of moving forward with that work.

2 I think this is a case where we
3 didn't know anything about this particular
4 library lack of parking, I guess, which
5 perhaps is causing a little bit of this
6 conversation we are having today.

7 And as we stated in the report,
8 that's a good thing. Perhaps more things need
9 to be done to accompany the lack of parking
10 that is going to happen here at this site.

11 CHAIRMAN HOOD: So the long and
12 short of it is you're looking for DCPL to do
13 like Wilson High School more or less and put
14 some of those traffic mitigations and parking
15 issues in their budget and accommodate it?

16 MR. JENNINGS: As we discussed at
17 our meeting with DCPL, you know, we certainly
18 let them know that trying to find the money at
19 this point in time would not be an easy
20 process. And we would perhaps like for them
21 to move forward with those ideas that we
22 suggested to them at that meeting in December,

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1 but, of course, much of our budget, as has
2 been stated here, is spoken for.

3 CHAIRMAN HOOD: I don't know how
4 much of this is within our control. I mean,
5 we can surely ask. And it may be and it may
6 not, but I just don't see this being a show
7 stopper for me. I would just again
8 courteously ask both agencies to continue to
9 work together, so you can achieve what DDOT
10 has issued.

11 Because you guys are the
12 professionals, but also the experts. We know
13 you are professionals, but you all are the
14 experts, and also continue to work with DCPL.

15 I'm not sure, but let me open it up to my
16 other Commissioners who may want to comment on
17 any of this. Commissioner Schlater?

18 COMMISSIONER SCHLATER: Mr.
19 Chairman, just a point of clarification on
20 DDOT's position here. It says "The District
21 Department of Transportation does not disagree
22 with the applicant's request for an amendment

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1 to the Zoning Map."

2 Does that mean DDOT agrees with
3 the applicant's request for an amendment to
4 the Zoning Map?

5 MR. JENNINGS: I think we take a
6 position where we like the idea of this
7 library project moving forward. I don't think
8 you are necessarily seeing language used here
9 where we're giving it full-fledged approval.
10 We would like DCPL to come to DDOT in a
11 similar fashion to what the DCPS folks and the
12 Office of Facility's folks did with the
13 example I cited earlier.

14 That would have made it perhaps a
15 much easier process than what we are
16 experiencing right now.

17 COMMISSIONER SCHLATER: Do you
18 think ultimately that that is a zoning issue
19 or an intergovernmental coordination issue?

20 MR. JENNINGS: That's a great
21 question. And I don't know if I have the
22 answer to that here tonight.

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1 COMMISSIONER SCHLATER: Okay. I
2 think I come down on the side of it being an
3 intergovernmental issue.

4 MR. JENNINGS: And, Mr. Chairman,
5 just for kind of the sake of example, what I
6 received recently in the last couple of weeks
7 or so since we have had this meeting with DCPL
8 is that this intersection that we are dealing
9 with, that's mentioned here in our report,
10 it's a precarious intersection, this T-
11 intersection that we are dealing with.

12 And I think that's why we are
13 trying to make it as much of a point here as
14 possible. I even received an email recently
15 from somebody in the community stating that
16 there was a near miss of two young people at
17 this intersection that just happened in the
18 middle of the week last week.

19 So I do hope that, you know, as
20 you put it pretty well, we can move forward in
21 a positive way with this. You know, this
22 project is a very, very good project. And we

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1 don't necessarily want to stand in the way of
2 this.

3 But there also comes a point where
4 we know in three or four years or whenever the
5 library is completed this intersection will
6 see much more activity than what it is seeing
7 at the current time with the school, Beers
8 Elementary School, being practically next
9 door, students from Beers visiting the Francis
10 Gregory Library after school. We will
11 continue to see circumstances like what we saw
12 just last week or I heard about.

13 I even brought the email from the
14 community person with me here tonight.

15 CHAIRMAN HOOD: Maybe we need to
16 do some reprogramming of dollars, because if
17 that issue is going on now, then I would
18 encourage DDOT to do all they can to deal with
19 the issues out there now.

20 This kind of reminds me of another
21 case we had previously. It was on Martin
22 Luther King Avenue. You know, there was a

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1 situation that was already existing. So I
2 would just -- and I know you are saying that
3 the budget has been out for six years, but I
4 don't know if I would put all that strain on
5 this applicant, because we already have an
6 issue out there.

7 That email you have for, I guess,
8 two young folks who almost were hit or
9 something? I don't know what it says in the
10 email, but you alluded to that. So there is
11 an issue. I don't know if it is this
12 applicant's issue, but again, I would hope
13 that both DDOT and the applicant would
14 continue to work together and move forward.

15 At least that's where I'm going to
16 come down on it. Okay. Commissioner May?

17 COMMISSIONER MAY: Yes. You cite
18 the example of Wilson High School. Which
19 entity at Wilson actually approached you about
20 this? Was it OPEFM or D.C. Public Schools or
21 was it the Wilson High School Corporation?
22 What?

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1 MR. JENNINGS: DCPS and OPEFM sat
2 in the meeting together.

3 COMMISSIONER MAY: Both of them in
4 the meeting together. And OPEFM was willing
5 to put up the money for the traffic calming
6 measures?

7 MR. JENNINGS: I don't remember
8 who said we would be willing to put up the
9 money, but they both sat there and said this
10 is going to happen.

11 COMMISSIONER MAY: You know, I
12 understand the desirability of having that
13 kind of a situation. I don't know that either
14 the D.C. Public Libraries are in the same
15 situation to be able to respond like that in
16 that circumstance, so I'm not sure how
17 completely relevant that example is.

18 I also know, I mean, the Wilson
19 High School community is very active and it
20 would not surprise me at all if they were able
21 to persuade DDOT to pay for this if they
22 hadn't already convinced DCPS or OPEFM.

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1 You know, some of the stuff that
2 we are talking about is basic traffic calming
3 that, you know, gets installed across the city
4 some times with less than six-year planning.
5 And so it seems to me that there is room to
6 work something out.

7 And frankly, whether it comes from
8 DCPS' budget or whether it comes from DDOT's
9 budget, at this point, it doesn't really make
10 that much difference.

11 And, you know, like the Chairman I
12 would really hope that both the applicant and
13 DDOT would work this out, so that when this
14 library opens, that it is safe for people to
15 cross the street to get to it. And it
16 certainly seems achievable to me and I don't
17 know that we necessarily need to do anything
18 different in our action tonight to make sure
19 that that happens.

20 I think that the burden is on DDOT
21 and DCPL to work together to resolve this.

22 CHAIRMAN HOOD: Any comments?

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1 Commissioner Turnbull?

2 COMMISSIONER TURNBULL: Thank you,
3 Mr. Chair. I guess I'm a little bit concerned
4 that, at this point of the process, final
5 action, we are suddenly hearing that we have a
6 precarious situation at this intersection and
7 they are looking for us to go ahead and
8 approve this.

9 And we can go ahead and approve
10 it, but precarious is the same as dangerous.
11 I mean, unsafe. I just can't imagine that
12 this hasn't risen up a level to say we have
13 got an issue here for a public entity that
14 needs to open and we are not working together
15 to do this.

16 I would agree with Commissioner
17 May that this is ridiculous. I mean, this is
18 the first time I have heard DDOT refer to an
19 intersection as precarious. So it just
20 strikes me we are at final action and we are--
21 what do you do?

22 CHAIRMAN HOOD: I think DDOT

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1 mentioned, and Mr. Jennings alluded to again
2 tonight, DDOT was unaware of this project,
3 right?

4 MR. JENNINGS: I had seen it on
5 the zoning calendar earlier last year. It
6 didn't necessarily rise to the level of where
7 DDOT needed to make comments at that point in
8 time. We became much more aware of the case
9 when this panel here suggested for the
10 applicant to meet with transportation because
11 of the lack of parking in a private lot.

12 That parking, as I think you may
13 have noted or observed at the earlier case,
14 earlier hearing, will happen along the street.

15 And I think there may have been some earlier
16 discussion as well. More pedestrians will be
17 accessing this site, because there will be
18 less parking.

19 So we met with the applicant
20 December 17th and we came to the suggestions
21 that we came to for DCPL during that meeting.

22 COMMISSIONER MAY: Mr. Chairman, i

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1 would note that we received, in one of them,
2 the filings, from, I guess, the applicant, the
3 February 6, 2009 report from DDOT which gave
4 its support to the project. It didn't address
5 any of the pedestrian crossing concerns.

6 It was focused mostly on the
7 parking issue. I understand, Mr. Jennings,
8 you may not have been aware of it, at that
9 time, because it was not signed by you or
10 initialed by you. But I don't think it is
11 completely correct to say that DDOT was
12 unaware of the project.

13 I think that some of these issue
14 arose relatively recently. So I don't think,
15 you know, the issue of when it actually came
16 to the forefront and DDOT's planning is
17 vitally important at this time. I think it
18 became important as the result of our
19 deliberations. And I think that it's
20 important that it be addressed.

21 And you know, I don't know that we
22 necessarily have much more that we could do to

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1 make sure that it is, but, you know, if there
2 are more near misses and more emails about
3 that or if, God forbid, something really bad
4 should happen at that intersection, I have to
5 believe that there will be crews out there
6 pretty quickly trying to install devices to
7 fix things once the new library is open.

8 And I think they will figure out
9 who pays for it without any trouble.

10 CHAIRMAN HOOD: I would agree with
11 your comments, Commissioner May. And all of
12 my colleagues and their comments. I think not
13 to belabor, because if not, if we keep going,
14 those mitigation methods will probably be out
15 there. They will have taken care of that
16 while we're sitting here talking about it.

17 But I will tell you that I think
18 all the comments were heard, it's a part of
19 the record. I'm hoping that those agencies
20 will continue to work together along with the
21 community. As was mentioned, the near miss,
22 as Commissioner May said those things don't

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1 happen long. Somebody is going to find some
2 money in this city to get that taken care of.

3 Okay. So I think we are fully on
4 record as Commissioners, because part of our
5 charge is to protect the residents of the
6 District of Columbia and all parties involved.

7 And I think we have expressed that in our
8 deliberations and in our conversation here.

9 And I also don't want to not go on
10 notice the work of Ms. Bray, who put together
11 a nice package and response to the three page
12 letter. We got a nice -- I thought it was a
13 hearing package at first, but we got a nice
14 response to it and all the work that she did.

15 Mr. Jennings, you're not upset
16 with us, are you? So what I would do is
17 acknowledge her. I like the work that she put
18 into this response.

19 So anyway, I would move approval
20 of Zoning Commission Case No. 09-17 and also
21 in that approval let us be on record for the
22 concern of making sure that the agencies work

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1 together to try to mitigate some of those
2 issues that may occur out there before they
3 happen and ask for a second.

4 COMMISSIONER SCHLATER: Second.

5 CHAIRMAN HOOD: Moved and properly
6 seconded. Further discussion?

7 All those in favor?

8 ALL: Aye.

9 CHAIRMAN HOOD: Any opposition?
10 So ordered. Staff, Ms. Schellin, would you
11 record the vote with the proxy?

12 MS. SCHELLIN: Yes. Staff records
13 the vote 5-0-0 to approve final action in
14 Zoning Commission Case No. 09-17, Commissioner
15 Hood moving, Commissioner Schlater seconding,
16 Commissioners May, Turnbull in support,
17 Commissioner Keating in support by absentee
18 ballot.

19 CHAIRMAN HOOD: Again, I think it
20 needs to be said while we may not always agree
21 with DDOT, we definitely appreciate, and if
22 you all could make sure Mr. Jennings either

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1 watched the webcast live rerun, but we
2 definitely appreciate DDOT coming down. And I
3 do not want that to go unmentioned, because we
4 do appreciate the thought and the interest in
5 which they provide us.

6 COMMISSIONER MAY: Mr. Chairman?

7 CHAIRMAN HOOD: Yes, sir?

8 COMMISSIONER MAY: I would also
9 add that, I mean, the fact that Mr. Jennings
10 was here for this meeting as opposed to simply
11 coming to a hearing, which is what they
12 normally do, I think is especially noteworthy,
13 because he anticipated there would be some
14 discussion on it. And it was very helpful to
15 the Commission having him here.

16 CHAIRMAN HOOD: That's great.
17 Yes, I definitely agree.

18 Okay. Let's move on with our
19 agenda. I saw we have correspondence on
20 Zoning Commission Case No. 09-14, Safeway,
21 Inc. - Letter from applicant requesting
22 indefinitely postponement of January 14th

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1 hearing. Ms. Schellin?

2 MS. SCHELLIN: Yes, this is a
3 request from the applicant asking for an
4 indefinite postponement. The applicant needs
5 some time to go back and address some issues
6 that, I believe, the Office of Planning has
7 brought up and also the community.

8 And so they would like to have an
9 indefinite postponement to work with the
10 community and work with the Office of
11 Planning. And when they feel they have done
12 that, then they will contact us when they are
13 ready to schedule a new hearing.

14 CHAIRMAN HOOD: Okay.
15 Commissioners, we have a request. We also
16 have a request Office of Planning said that
17 they would not be submitting a public hearing
18 report at this time. So you know, there are a
19 number of factors that we don't really have in
20 front of us to weigh to begin with.

21 It looks like there is going to be
22 more collaboration between all the parties

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1 involved and they are asking that we do this
2 indefinitely, so they can work out all the
3 kinks. And it appears that you guys possibly
4 only have a five minute hearing on this case.

5 So with that said, do we need to
6 do a motion on this indefinite postponement?
7 Somebody would like to do it or you would like
8 me to do it?

9 Okay. I would move that we
10 postpone 09-14 indefinitely and ask for a
11 second.

12 COMMISSIONER TURNBULL: Second.

13 CHAIRMAN HOOD: Moved and properly
14 seconded. Any further discussion?

15 All those in favor?

16 ALL: Aye.

17 CHAIRMAN HOOD: Not hearing any
18 opposition, Ms. Schellin, would you record the
19 vote?

20 MS. SCHELLIN: Yes. Staff records
21 the vote 4-0-1 to approve the request for an
22 indefinite postponement of the hearing in

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1 Zoning Commission Case No. 09-14, Commissioner
2 Hood moving, Commissioner Turnbull seconding,
3 Commissioners May, Schlater in support,
4 Commissioner Keating not present, not voting.

5 CHAIRMAN HOOD: Okay. I want to
6 thank everyone for their participation
7 tonight.

8 Ms. Schellin, do we have anything
9 else in front of us?

10 MS. SCHELLIN: No, sir, that's it.

11 CHAIRMAN HOOD: Okay. With that,
12 this meeting is adjourned.

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